

Nuclear Regulatory Commission

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subpart E, or apply for approval for disposal under 10 CFR 20.2002.

(4) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(h) In providing financial assurance under this section, each licensee must use the financial assurance funds only for decommissioning activities and each licensee must monitor the balance of funds held to account for market variations. The licensee must replenish the funds, and report such actions to the NRC, as follows:

(1) If, at the end of a calendar quarter, the fund balance is below the amount necessary to cover the cost of decommissioning, but is not below 75 percent of the cost, the licensee must increase the balance to cover the cost, and must do so within 30 days after the end of the calendar quarter.

(2) If, at any time, the fund balance falls below 75 percent of the amount necessary to cover the cost of decommissioning, the licensee must increase the balance to cover the cost, and must do so within 30 days of the occurrence.

(3) Within 30 days of taking the actions required by paragraph (h)(1) or (h)(2) of this section, the licensee must provide a written report of such actions to the Director, Office of Federal and State Materials and Environmental Management Programs, and state the new balance of the fund.

[53 FR 24053, June 27, 1988, as amended at 56 FR 23474, May 21, 1991; 57 FR 18393, Apr. 30, 1992; 58 FR 39634, July 26, 1993; 58 FR 67662, Dec. 22, 1993; 58 FR 68731, Dec. 29, 1993; 59 FR 1618, Jan. 12, 1994; 60 FR 38239, July 26, 1995; 61 FR 24675, May 16, 1996; 62 FR 39091, July 21, 1997; 63 FR 29544, June 1, 1998; 68 FR 57337, Oct. 3, 2003; 76 FR 35572, June 17, 2011]

Subpart E—Licenses

§ 70.31 Issuance of licenses.

(a) Upon a determination that an application meets the requirements of the act and of the regulations of the Commission, the Commission will issue a license in such form and containing such conditions and limitations as it

deems appropriate or necessary to effectuate the purposes of the act.

(b) [Reserved]

(c) Each license issued to a person for use of special nuclear material in activities in which special nuclear material will be produced shall (subject to the provisions of § 70.41(b)) be deemed to authorize such person to receive title to, own, acquire, receive, possess, use, and transfer the special nuclear material produced in the course of such authorized activities.

(d) No license will be issued by the Commission to any person within the United States if the Commission finds that the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

(e) No license to construct and operate a uranium enrichment facility may be issued until a hearing pursuant to 10 CFR part 2, subparts G and I, is completed and decision issued on the application.

[21 FR 764, Feb. 3, 1956, as amended at 32 FR 2563, Feb. 7, 1967; 32 FR 4056, Mar. 15, 1967; 43 FR 6925, Feb. 17, 1978; 57 FR 18393, Apr. 30, 1992]

§ 70.32 Conditions of licenses.

(a) Each license shall contain and be subject to the following conditions:

(1) [Reserved]

(2) No right to the special nuclear material shall be conferred by the license except as defined by the license;

(3) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of the Act;

(4) All special nuclear material shall be subject to the right of recapture or control reserved by section 108 and to all other provisions of the Act;

(5) No special nuclear material may be used in any utilization or production facility except in accordance with the provisions of the Act;

(6) The licensee shall not use the special nuclear material to construct an atomic weapon or any component of an atomic weapon;

(7) Except to the extent that the indemnification and limitation of liability provisions of part 140 of this chapter apply, the licensee will hold the

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United States and the Department harmless from any damages resulting from the use or possession of special nuclear material leased from the Department by the licensee;

(8) The license shall be subject to and the licensee shall observe, all applicable rules, regulations and orders of the Commission.

(9)(i) Each licensee shall notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(A) The licensee;

(B) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(C) An affiliate (as that term is defined in 11 U.S.C. 101(a)) of the licensee.

(ii) This notification must indicate:

(A) The bankruptcy court in which the petition for bankruptcy was filed; and

(B) The date of the filing of the petition.

(b) The Commission may incorporate in any license such additional conditions and requirements with respect to the licensee's ownership, receipt, possession, use, and transfer of special nuclear material as it deems appropriate or necessary in order to:

(1) Promote the common defense and security;

(2) Protect health or to minimize danger to life or property;

(3) Protect restricted data;

(4) Guard against the loss or diversion of special nuclear material;

(5) Require such reports and the keeping of such records, and to provide for such inspections, of activities under the license as may be necessary or appropriate to effectuate the purposes of the act and regulations thereunder.

(c)(1) Each license authorizing the possession and use at any one time and location of uranium source material at an uranium enrichment facility or special nuclear material in a quantity exceeding one effective kilogram, except for use as sealed sources and those uses involved in the operation of a nuclear reactor licensed pursuant to part 50 of

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this chapter and those involved in a waste disposal operation, shall contain and be subject to a condition requiring the licensee to maintain and follow:

(i) The program for control and accounting of uranium source material at an uranium enrichment facility and special nuclear material at all applicable facilities as implemented pursuant to § 70.22(b), or §§ 74.31(b), 74.33(b), 74.41(b), or 74.51(c) of this chapter, as appropriate;

(ii) The measurement control program for uranium source material at an uranium enrichment facility and for special nuclear material at all applicable facilities as implemented pursuant to §§ 74.31(b), 74.33(b), 74.45(c), or 74.59(e) of this chapter, as appropriate; and

(iii) Other material control procedures as the Commission determines to be essential for the safeguarding of uranium source material at an uranium enrichment facility or of special nuclear material and providing that the licensee shall make no change that would decrease the effectiveness of the material control and accounting program implemented pursuant to § 70.22(b), or §§ 74.31(b), 74.33(b), 74.41(b), or 74.51(c) of this chapter, and the measurement control program implemented pursuant to §§ 74.31(b), 74.33(b), 74.41(b), or 74.59(e) of this chapter without the prior approval of the Commission. A licensee desiring to make changes that would decrease the effectiveness of its material control and accounting program or its measurement control program shall submit an application for amendment to its license pursuant to § 70.34.

(2) The licensee shall maintain records of changes to the material control and accounting program made without prior Commission approval for a period of 5 years from the date of the change. Licensees located in all four Regions as indicated in appendix A of part 73 of this chapter shall furnish to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, using an appropriate method listed in § 70.5(a), a report containing a description of each change within:

(i) Two months of the change if it pertains to uranium-233, uranium-235

contained in uranium enriched 20 percent or more in the uranium-235 isotope, or plutonium, except plutonium containing 80 percent or more by weight of the isotope Pu-238, and

(ii) Six months of the change if it pertains to uranium enriched less than 20 percent in the uranium-235 isotope, or plutonium containing 80 percent or more by weight of the isotope Pu-238.

(d) The licensee shall make no change which would decrease the effectiveness of the plan for physical protection of special nuclear material in transit prepared pursuant to § 70.22(g) or § 73.20(c) of this chapter without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for a change in the technical specifications incorporated in his or her license, if any, or for an amendment to the license pursuant to § 50.90 or § 70.34 of this chapter, as appropriate. The licensee may make changes to the plan for physical protection of special nuclear material without prior Commission approval if these changes do not decrease the effectiveness of the plan. The licensee shall retain a copy of the plan as a record for the period during which the licensee possesses a formula quantity of special nuclear material requiring this record under each license and each change to the plan for three years from the effective date of the change. Within two months after each change, a report containing a description of the change must be furnished to the Director of the NRC's Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 70.5(a); and a copy must be sent to the appropriate NRC Regional Office shown in appendix A to part 73 of this chapter.

(e) The licensee shall make no change which would decrease the effectiveness of a security plan prepared pursuant to §§ 70.22(h), 70.22(k), or 73.20(c) without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to its license pursuant to § 70.34. The licensee shall maintain records of changes to the plan made without prior Commission approval, for three years from the effective date of the change, and shall,

within two months after the change is made, furnish a report containing a description of each change to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response; the report may be sent using an appropriate method listed in § 70.5(a), and a copy of the report must be sent to the appropriate NRC Regional Office shown in appendix A to part 73 of this chapter.

(f) [Reserved]

(g) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C to part 73 of this chapter for bringing about the actions and decisions contained in the Responsibility Matrix of its safeguards contingency plan. The licensee shall retain the current safeguards contingency plan procedures as a record for the entire period during which the licensee possesses the appropriate type and quantity of special nuclear material under each license for which the procedures were developed and, if any portion of the plan is superseded, retain that superseded portion for 3 years after the effective date of the change. The licensee shall not make a change that would decrease the safeguards effectiveness of the first four categories of information (*i.e.*, Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in any licensee safeguards contingency plan prepared pursuant to §§ 70.22(g), 70.22(j), 72.184, 73.20(c), 73.26(e)(1), 73.46(h)(1), or 73.50(g)(1) of this chapter without the prior approval of the NRC. A licensee desiring to make such a change shall submit an application for an amendment to its license pursuant to § 70.34. The licensee may make changes to the licensee safeguards contingency plan without prior NRC approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain each change to the plan made without prior approval as a record during the period for which possession of a formula quantity of special nuclear material is authorized under a license and retain the superseded portion for 3 years after the effective date of the change, and shall, within 60 days after the change is made, furnish a report

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containing a description of each change to the Director of Nuclear Material Safety and Safeguards; the report may be sent using an appropriate method listed in § 70.5(a), and a copy of the report must be sent to the Regional Administrator of the appropriate NRC Regional Office as specified in appendix A to part 73 of this chapter.

(h) [Reserved]

(i) Licensees required to submit emergency plans in accordance with § 70.22(i) shall follow the emergency plan approved by the Commission. The licensee may change the approved plan without Commission approval if the changes do not decrease the effectiveness of the plan. Within six months after each change is made, the licensee shall, using an appropriate method listed in § 70.5(a), furnish the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, a copy of each change, with copies to the appropriate NRC Regional Office specified in appendix D to part 20 of this chapter and to affected offsite response organizations. Proposed changes that decrease the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Commission.

(j) Each licensee who possesses special nuclear material, or who transports, or delivers to a carrier for transport, a formula quantity of strategic special nuclear material, special nuclear material of moderate strategic significance, or special nuclear material of low strategic significance, or more than 100 grams of irradiated reactor fuel shall ensure that Safeguards Information is protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable, and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.

(k) No person may commence operation of a uranium enrichment facility until the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license. The Commission shall publish notice of the in-

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spection results in the FEDERAL REGISTER.

[21 FR 764, Feb. 3, 1956]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 70.32, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 70.33 Applications for renewal of licenses.

Applications for renewal of a license should be filed in accordance with §§ 70.21 and 70.22. Information contained in previous applications, statements or reports filed with the Commission under the license may be incorporated by reference, provided that such references are clear and specific.

[75 FR 73944, Nov. 30, 2010]

§ 70.34 Amendment of licenses.

Applications for amendment of a license shall be filed in accordance with § 70.21(a) and shall specify the respects in which the licensee desires his license to be amended and the grounds for such amendment.

§ 70.35 Commission action on applications to renew or amend.

In considering an application by a licensee to renew or amend his license, the Commission will apply the criteria set forth in § 70.23.

§ 70.36 Inalienability of licenses.

(a) No license granted under the regulations in this part and no right to possess or utilize special nuclear material granted by any license issued pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the Commission shall after securing full information, find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing.

(b) An application for transfer of license must include:

(1) The identity, technical and financial qualifications of the proposed transferee; and